



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Mace Stewart, Vice-President
State Board for Vocational Education
Capitol Basement
Austin, Texas

Dear Mr. Stewart;

Opinion No. O-6150

Re: Necessity for the State Board
of Control to purchase prosthetic
appliances through bids, for patients
of the Vocational Rehabilitation
Division.

This will acknowledge receipt of your request for
an opinion from this department upon the above subject matter.
Your request is as follows:

"For a number of years the Vocational Rehabilitation Division, under the State Board for Vocational Education, has been purchasing prosthetic appliances for their clients by asking the State Board of Control to receive bids. It is the contention of Mr. J. J. Brown, Director of the Vocational Rehabilitation Division, that the purpose and intent of any State law will not be violated if bids are not asked by the State Board of Control upon a prosthetic appliance.

"As an example of Mr. Brown's reasoning concerning this matter, he states that a man may become hard of hearing for one of the following reasons:

- "1. He inherits this weakness.
- "2. A man becomes hard of hearing as a result of disease, such as catarrh, diphtheria, mastoid trouble, measles.
- "3. A man becomes hard of hearing on account of his age.
- "4. A man becomes hard of hearing on account of traumatic injury.
- "5. Various people become hard of hearing for no apparent reason or cause.

Honorable Laco Stewart - page 2

"According to the Director of Vocational Rehabilitation, one man can hear better with an inner-ear conduction, and another with bone conduction on the outside of the ear. One man can hear better with one hearing device than he can with another, and only an otologist can tell the type of hearing device best suited for a person. Therefore, it is Mr. Brown's contention that hearing devices should be purchased upon the recommendation of a recognized otologist.

"In regard to the purchase of artificial limbs, it is Mr. Brown's contention that every stump requiring an artificial limb is different. One person can best be fitted with a leather socket, another with a plastic socket, and another with perhaps a wooden socket that one man can wear shoulder straps and support a limb whereas another person requires a pelvic belt attachment. Each person wearing a limb wants a particular kind of limb and when they are forced to accept another kind of limb it does not prove satisfactory.

"In regard to the purchase of glasses, it is difficult to order glasses for the simple reason that nearly every pair of glasses require some adjustment - lenses have to be ground and fittings have to be made.

"The State Board for Vocational Education hereby requires an opinion relative to whether or not it is necessary for the State Board of Control to purchase prosthetic appliances through bids for clients of the Vocational Rehabilitation Division."

You are respectfully advised that it is the opinion of this department the purchase of prosthetic appliances, such as you mention, need not to be through the State Board of Control upon competitive bidding.

Your question is ruled by our Opinion No. 0-2771, addressed to Director Brown on a very similar question, in which opinion we said:

"From what you say in your letter of request, -- and your statement comports with common understanding, -- a brace for a crippled

Honorable Laco Stewart - page 3

child is not such a thing as is contemplated by our statutes calling for competitive bids in purchasing supplies for an institution. A brace is not a commodity carried in stocks from which a purchase may be quickly made, like a hat or a pair of shoes, for the simple reason that a brace for a crippled child is a specialty and must be precisely fitted to the particular need and condition of the injured or abnormal limb. It is of a kind with the fitting of glasses or the setting of a broken limb in plaster. The purchase of such brace is not in its nature a commercial purchase from a store or dealer; it is in the nature of a service in connection with the treatment of the broken, deformed or maladjusted limb. It is as much a service as is the surgeon's operation; indeed, it is a species of mechanical operation. Every such case presents an individual situation and must be treated accordingly; so that, in our opinion, the purchase of a brace does not fall within the scope of the statutes requiring competitive bids by the Board of Control.

"If we are mistaken in this, we are further of the opinion that the statutes themselves, when liberally or even reasonably construed, compel the same conclusion.

"House Bill No. 502, passed at the Regular Session of the 44th Legislature (General Laws, 44th Leg., p. 328) provides:

"At the discretion of the State Department of Education, transportation, appliances, braces and material necessary in the proper handling of crippled children may be in part or entirely provided.

"The Rehabilitation Division of the State Department of Education is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selection of physicians and hospitals, and shall arrange with hospitals, brace departments and other

Honorable Maco Stewart - page 4

services providing for crippled children's work, compensation for such services, provided that such fees or charges shall not exceed the average minimum charges for the same services rendered to average ward patients in the hospitals approved for purpose of this Act -- such Rules and regulations shall be approved by the State Department of Education."

What we there said applies as well to your question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

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By

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